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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/511,588
Filing Date: October 04, 2004
Appellant(s): SATO, YOSHIHARU

Douglas P. Mueller
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 05/03/2010 appealing from the Office action mailed 08/03/2009.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1 & 4-18.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

WO/021890 A2

Maisey et al

07-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

Claims 1, 4-6, 9-13, 17, & 18 are rejected under 35 U.S.C. 102(b) as being anticipated by MAISEY ET AL (WO/0218940).

Appellants' claims are toward a device.

Regarding Claims 1, 4-6, 9-13, 17, & 18, MAISEY ET AL discloses the analytical tool cartridge comprising: A). A case including a storage space (See Figure 2a, Items 2 & 18) and B). A retrieval port that communicates the storage space with an external space (See Figure 4a Item 12); C). A plurality of analytical tools stored in the storage space in a stacked state (See Figure 2a Item 16); D). A retrieval mechanism for retrieving the analytical tools one at a time from the case via the retrieval port (See Figure 2a Item 24); and E). An opening/closing mechanism for opening and closing the retrieval port; wherein the retrieval mechanism and the opening/closing mechanism are, integral with each other as a single operating body, wherein the operating body is formed in a loop encircling the plurality of analytical tools ((See Figure 3a Item 14 and Item 4 which is labeled as both the barrel and the housing in Maissey; See Page 11 lines 34-37. The housing is also labeled as Item 2); and comprises an engaging projection, a closing portion and an opening portion, the engaging projection being configured to integrally move the analytical tools when the operating body is moved in a specific direction from a standby state, the closing portion being configured to close up the retrieval port in the standby state, the opening portion being configured to open up the retrieval port when the operating body is moved in the specific direction from the standby state (See Figure 3a Item 14 and Item 4).

Additional Disclosures Included: Claim 4: The case includes an annular wall portion that defines the storage space and has the retrieval port provided therein, the operating body disposed along an outer surface of the annular wall portion, and movable relative to the annular wall portion (See Figure 4a, the barrel and item 12 form

an annular wall which defines the storage space); Claim 5: The analytical tools each include an engaging portion with which the engaging projection engages (See Figure 2a, the analytical tools have a surface edge which engage the projections of the recess); Claim 6: The operating body includes an operating portion for applying a load to and thus moving the operating body (See Page 12 lines 15-22, user initiating turning of the feed barrel implies applying a load); Claim 9: The analytical tool cartridge the analytical tools are stored in the storage space in a state supported by a platform, and are supported in a state biased by the platform (See Figures 2a or 3a Item 24); Claim 10: The case is provided with a guiding portion for guiding the operating body when the operating body is moved (See Figure 7 Items 2 & 30); Claim 11: The storage space has therein stacked on top of the analytical tools an information outputting chip from which can be outputted information relating to properties of the analytical tools (See Page 11 lines 29-34); Claim 12: The information outputting chip outputs information relating to a calibration curve (See Page 11 lines 29-34); Claim 13: A set of an analytical tool cartridge and an analyzer, the set analytical tool cartridge comprising: A) A case including a storage space and B). A retrieval port that communicates the storage space with an external space; C). A plurality of analytical tools stored in the storage space in a stacked state; D). A retrieval mechanism for retrieving the analytical tools one at a time from the case via the retrieval port; and D). An opening/closing mechanism for operating and closing the retrieval port; wherein the retrieval mechanism and the opening/closing mechanism are integral with each other as a single operating body, and E). Wherein the operating body is formed in a loop encircling the plurality of analytical tools (See Figure

4a, the barrel and item 12 form an annular wall which defines the storage space); and comprises an engaging projection, a closing portion and an opening portion, the engaging projection being configured to integrally move the analytical tools when the operating body is moved in a .specific direction from a standby state, the closing portion being configured to close up the retrieval port in the standby state, the opening portion being configured to open up the retrieval port when the operating body is moved in the specific direction from the standby state (See rejection of Claim 1 for the analytical tool cartridge), the analyzer being constituted so as to have installed therein an analytical tool retrieved from the analytical tool cartridge, and analyze a specific component in a specimen liquid supplied onto the analytical tool (See Claim 1 of MAISEY ET AL, electrical contacts), at least one of the analytical tool cartridge and the analyzer being provided with cartridge fixing means for locating and fixing the analytical tool cartridge onto the analyzer (See Figure 31 Items 112 & 108 and frame which the cartridge fits into); Claim 17: A set of an analytical tool cartridge and an analyzer, the analytical tool cartridge comprising: A). A case including a storage space and a retrieval port that communicates the storage space with an external space; B). A plurality of analytical tools stored in the storage space in a stacked state; C). A retrieval mechanism for retrieving the analytical tools one at a time from the case via the retrieval port, and D). An opening/closing, mechanism for opening and closing the retrieval port, wherein the retrieval mechanism and the opening/closing mechanism are integral with each other as a single operating body wherein the operating body is formed in a loop encircling the plurality of analytical tools (See Figure 4a, the barrel and item 12 form an

annular wall which defines the storage space); and comprises an engaging projection, a closing portion and an opening portion, the engaging portion being configured to integrally move the analytical tools when the operating body is moved in a specific direction from a standby state, the closing portion being configured to close up the retrieval port in the standby state, the opening portion being configured to open up the retrieval port when the operating body is moved in the specific direction from the standby state, the analyzer being constituted so as to install an analytical tool retrieved from the analytical tool cartridge, and to analyze a specific component in a specimen liquid supplied onto the analytical tool, the analyzer including an inserting portion into which an end portion of the analytical tool is inserted, the analytical tool cartridge and the inserting portion being provided: with analytical tool fixing means for fixing the analytical tool in the analyzer (See Rejections for Claim 1 & 13); and Claim 18: The analytical tool fixing means comprises a projection provided on one of the analytical tool and the inserting portion, and a recess provided in the other thereof for engaging with the projection (See Figure 31, Item 112 & 110 both have either a recess or projection which cooperate to fix the cartridge into the analyzer.

Claim Rejections - 35 USC § 103

Claims 7 & 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over MAISEY ET AL.

Appellants' claims are toward a device.

Regarding Claims 7 & 8, MAISEY ET AL discloses the analytical tool cartridge according to Claim 7, except wherein the storage space has a desiccant housed therein. Maisey does however disclose the importance of keeping the analytical tools in the cartridge free from moisture, and also discloses the use of a moisture-proof seal. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the cartridge to include a dessicant inside the storage space or to use a sealing member which contains the dessicant (for Claim 8, which is fixed to the platform) in order to prevent the moisture from interacting with the analytical tools in the storage space.

(10) Response to Argument

Appellants' argue that Maisey et al does not disclose the Appellants' alleged invention. The Examiner respectfully disagrees. Maisey et al discloses the operating body as claimed in Appellants' alleged invention.

Appellants' argument as detailed on Page 11 bridging Page 12 (Item #1), are toward whether or not Maisey et al discloses the operating body as claimed. The Argument however only cites Figure 2a Item 2. This argument does not correctly cite the rejection of the operating body in the rejection as shown above.

Appellants Claim 1 recites that the operating body includes three limitations: 1). A retrieval mechanism for retrieving the analytical tools one at a time from the case via the retrieval port (See Figure 2a Item 24; magazine spring); 2). An opening/closing mechanism for opening and closing the retrieval port; wherein the retrieval mechanism

and the opening/closing mechanism are integral with each other as a single operating body, and 3). Wherein the operating body is formed in a loop encircling the plurality of analytical tools ((See Figure 3a Item 14 and Item 4 which is labeled as both the barrel and the housing in Maisey; See Page 11 lines 34-37. The housing is also labeled as Item 2); and comprises an engaging projection, a closing portion and an opening portion, the engaging projection being configured to integrally move the analytical tools when the operating body is moved in a specific direction from a standby state, the closing portion being configured to close up the retrieval port in the standby state, the opening portion being configured to open up the retrieval port when the operating body is moved in the specific direction from the standby state (See Figure 3a Item 14 and Item 4). The housing and barrel are rotated and this rotation combined with the barrel, housing, and seal, are considered the opening/closing mechanism. A reading of the Rejection in the Final Office Action mailed on 05/03/2010, the rejection as set forth above, and Maisey et al as to how the analytical tool cartridge is opened/closed would allow one to interpret this rejection, the claim language, and Maisey et al in this manner.

Appellants also argue that Claims 1, 13, & 17 require both a case and a distinct operating body. The Examiner respectfully disagrees with this interpretation of the Claim language. There is no indication Claims 1, 13, or 17 require a case and a distinct operating body.

Appellants also argue that Maisey et al does not disclose that the retrieval mechanism and an opening/closing mechanism are integral with each other as required for the operating body in Claims 1, 13, & 17.

The Examiner respectfully disagrees. As shown in the rejections in above, both the retrieval mechanism and an opening/closing mechanism are integral to the analytical tool cartridge as claimed.

Appellants also argue that Maisey et al does not disclose an engaging projection as claimed. The Examiner respectfully disagrees. As cited in the rejection above, the engaging projection has been claim mapped to Item 4 in the rejection.

Appellants' last argument pertains to whether Maisey et al discloses that the operating body is formed in a loop encircling the plurality of analytical tools as recited in Claims 1, 13, & 17. Appellants argue that Maisey et al does not disclose that the operating body is formed in a loop encircling the plurality of analytical tools. The Examiner respectfully disagrees.

As claim mapped in the rejection, the housing is labeled as Items 2 & 4 in the rejection which forms the loop. Appellants' argument shows that Appellants have selectively interpreted the claim mapping in the rejection and have identified the housing as only Item 4 in the Arguments, but the rejection clearly states that the housing is Item 2 & 4.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 1797

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Examiner, Art Unit 1797

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Supervisory Patent Examiner, Art Unit 1797

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